No. 394.

Reply Brief of U.S.

v. Pratt

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In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES, APPELLANT,
v.
EDWARD P. ELLIS, EXECUTOR OF Donald McKay, deceased. } No. 394.

APPEAL FROM THE COURT OF CLAIMS.

REPLY BRIEF FOR THE UNITED STATES.

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The brief for appellee brings forward in support of the judgment of the court below certain contentions which have not been considered in the brief previously filed for the United States, and which seem to call for a reply.

1. *History of the jurisdictional act.*

The greater part of the brief for appellee is taken up with a review of the various legislative and executive proceedings which led up to the passage of the private jurisdictional act under which the present suit was brought. The object of calling attention to these proceedings is to show that the proviso in the jurisdictional act limiting the scope of allowances for advances in the

price of labor or material did not originate with that act, but is first found in the act of March 2, 1867 (14 Stats., 424), and appellee's counsel now contends that the interpretation of this proviso of the jurisdictional act must be controlled by the report of the House Committee on Claims, made when the act of 1867 was before Congress.

It is submitted that even if the present suit had been brought under the act of 1867 itself this committee report could not be received in evidence of the meaning which the whole body of Congress attached to the words of the statute. It is a well-settled rule that reports or recommendations made to a legislative body by a committee in relation to a pending measure can not be accepted as pertinent evidence of the meaning which the legislature intended to attach to the statute. (*State* v. *Burk*, 88 Io., 661; *Bank of Penna.* v. *Comth.*, 19 Pa., 144; see also *Donegall* v. *Layard*, 8 H. L. Cas., 460; *Steele* v. *Midland Ry. Co.*, L. R., 1 Ch., 275.) The reason for the exclusion of these reports is obviously the same as that given by this court for the exclusion of the expressions of opinion announced by members of a legislative body in debate. As far as throwing any light on the meaning of a bill is concerned, the difference between speaking in its favor and writing in its favor is immaterial, and hence it is pertinent to say in the present case that those who did not write "may not have agreed with those who did; * * * the result being that the only proper way to construe a legislative act is from the language used in the act, and upon occasion by resort to the history of the times when it was passed." (*United States* v. *Freight Association*, 166 U. S., 290, 318.)

If a committee report can not be received as evidence of the meaning of the act in regard to which the report was submitted, *a fortiori* it can not be received as evidence in the interpretation of an act passed years afterwards, and merely borrowing some of the language of the earlier act. While it is true that this court has held that debates in Congress are "valuable as contemporaneous opinions of jurists and statesmen upon the legal meaning of the words themselves" (*United States* v. *Wong Kim Ark*, 169 U. S., 649, 699), yet obviously these opinions, to be of any value whatever as a guide, must have been intentionally given in exposition of the legal meaning of the words used in the statute, as was actually the case in the opinions quoted in that case. A mere statement that it is desirable to do a certain thing, or that a claim based on a certain ground is valid and furnishes a legal and just rule for relief, can not possibly be taken as a definite exposition of the meaning of the words of a statute granting relief. If there be a discrepancy between the language of the statute itself and that of the report, it is the former which must be presumed to be the more carefully worded of the two, and which should control the latter, and not the reverse.

2. *The plain language of the jurisdictional act.*

Appellee's counsel seems to admit what is stated in the brief for the United States, page 10, that his contention makes the proviso in regard to advances in the price of labor and material absolutely meaningless and superfluous. He says:

> The basis for the investigation of the claim was limited to the additional cost necessarily incurred

> by reason of the changes ordered and delays caused by the United States. This excluded all enhancement in cost by reason of advance in prices if not consequent upon the action of the Government, and the clause in controversy, being the only one which mentions advance in price, may have been inserted partly by abundance of caution to show that the advance in price was in the mind of the lawmaker and was part of the cost to be considered by the Marchand board and by the Court of Claims in the investigation. (Brief for appellee, p. 18.)

The theory that a particular clause was introduced into a statute out of abundance of caution can not warrant its being so interpreted as to neither add anything nor take away anything from what would have been provided for without it, when the language of the clause itself necessarily indicates that this insertion was intended to modify in some particular the effect of the general language which precedes it. The words "provided" and "but" clearly indicate that the draftsman of the act of 1867, in which these words were originally found, meant to limit the allowances for advances in price to advances occurring during a certain "prolonged term," he evidently considering that the general language which preceded this proviso did not so limit the allowances. Now, it being admitted even by appellee's counsel that the language of those provisions which preceded this proviso in the statute (viz, "further compensation for the construction of the side-wheel steamer *Ashuelot*," "the additional cost which was necessarily incurred by the contractor in building the side-wheel steamer *Ashuelot* in the completion of the same") itself applied to the

entire period during which the vessel was under construction, and to no other period, the "prolonged term" must mean something less than that entire period, or else this proviso is wholly superfluous and the draftsman of the statute did not know the meaning of the words he used.

Under the rule that effect must be given, if possible, to every portion of a statute, it is clear that this proviso must be given a meaning different from that of the clauses which precede it, unless such different meaning is positively forbidden by its language. It appears, however, that the language of the proviso not merely warrants, but requires, an interpretation which limits the allowances to advances in price occurring after the contract terms for building the vessels to which the jurisdictional act related. The words "the prolonged term for completing the work" can mean nothing less than a term added to some previous period of time for the purpose of completing a work already begun and carried on during such prior period of time. To warrant appellee's contention, the words should have been "the period when the vessel was in building," words which would obviously have had a different meaning from those actually used.

3. *The decision in the Lawrence case.*

Appellee's counsel contends that the interpretation of the jurisdictional act under which the case of *Lawrence* v. *United States* (32 C. Cls. R., 245) was brought, an act similar to that involved in the present case, was a mere dictum "because the very point now presented for discussion did not in that case require consideration." It

is submitted that this contention wholly overlooks what was decided in the Lawrence case. The court of claims there held, first, that the only contract which could be sued upon in that case was the second contract; and secondly, that the only liability of the United States for advance in the prices of labor and material was for such advances as occurred after the expiration of the term fixed in the contract for building the vessel. The latter point, which is the very point now presented for discussion, was just as vital to the judgment in the Lawrence case as its overruling was to the judgment in the present case. Precisely the same point arose in both cases, and the only difference between the cases was in the judgment of the court, which decided the point in one way in the Lawrence case and in the opposite way in the present case. The mere fact that if the court had decided this point differently in the Lawrence case an amendment of its findings would have been required, in order to show the amount for which judgment should be entered, does not make one of the fundamental bases of the actual judgment a mere dictum.

4. *Effect of the judgment in the Nauset case.*

Since the original brief for the United States was written appellee's counsel has by stipulation added to the record a statement covering the proceedings in another case under the same jurisdictional act and between the same parties, but in regard to another vessel. It must be admitted that in taking action on the motion for a new trial in that case the Court of Claims did not adopt the same construction of the jurisdictional act which it

subsequently adopted in the Lawrence case, and that its decision in the present case was a return to the position which it had taken in the first Bliss case. The contention that the court below was bound in the present case to adhere to its decision in the first Bliss case because it was a suit between the same parties is, however, wholly unwarranted. The doctrine of *Chaffin* v. *Taylor* (116 U. S., 567), cited by appellee's counsel, is that this court will not review a final decision made by it in any case, upon a second appeal in the same case upon the same state of facts. In *Chaffin* v. *Taylor*, as well as all the prior cases which led up to it, it is clear that this finality of the decisions of this court can only be invoked as regards a second appeal upon the same facts in the very case in which the decision has been rendered, not in another case, whether between the same parties or not.

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